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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1949

Nos. 581 and 582

AMERICAN PRESIDENT LINES, LTD., (a corporation),
Petitioner,

vs.

JAMES M. AGNEW, et al.,
Respondents.

AMERICAN PRESIDENT LINES, LTD., (a corporation),
Petitioner,

vs.

JOHN W. GRIFFIN, et al.,
Respondents.

CONSOLIDATED ON APPEAL

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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Subject Index

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Statement	2
1. Certiorari should be denied for the reason that the petition does not present questions whose solution will have immediate importance beyond the particular facts and parties	6
2. Certiorari should not be granted to disturb the reasonable construction given by the court of appeals to the riders prepared by petitioner and forming part of the shipping articles	7
Conclusion	8

Table of Authorities Cited

Cases	Page
Magnum Import Co. v. Coty, 262 U.S. 159	6
Mason v. Texas Co., CA 1, 171 F.2d 559, certiorari denied May 31, 1949, 337 U.S. 915, 69 S.Ct. 1156	4
Montoya v. Tidewater-Associated Oil Co., CA 2, 174 F.2d 607, certiorari denied October 17, 1949, 70 S.Ct. 69	4
Steeves v. American Mail Lines, Ltd., CA 9, 154 F.2d 24	4
Statutes	
28 U.S.C., sec. 1354 (1)	2

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The opinion of the District Court is reported as 73 F. Supp. 944. R#581, 366-382. The opinions of the Court of Appeals are reported as 177 F.2d 107, and 177 F.2d 111. R#581, 428-434; R#582, 46-51.

JURISDICTION.

In each case the Court of Appeals entered judgment, as amended, on September 9, 1949. R#581, 426-427; R#582, 42-43. Jurisdiction of this Court is invoked under the Act of June 25, 1948. 28 U.S.C., sec. 1354 (1).

QUESTIONS PRESENTED.

1. Whether the petition presents questions whose solution will have immediate importance beyond the particular facts and parties.

2. Whether this Court should disturb a reasonable construction given by the Court of Appeals to riders prepared by petitioner and forming part of shipping articles.

STATEMENT.

Respondents are seamen who were members of the crew of the President Harrison when it sailed from San Francisco for the Orient on October 17, 1941. Pet. 3-4. The Japanese captured the vessel and crew west of the 180th meridian on December 8, 1941. Pet. 3-4.

Respondents were interned on the vessel until March of 1942. R#581, 212-213. They were then interned by the Japanese on land west of the 180th meridian, some until August 15, 1945, others until September 15, 1945. R#581, 8; R#582, 7.

The shipping articles of the President Harrison contained riders (R#581, 376-378), prepared by the shipowner (R#581, 303, 355), petitioner herein, whereby the shipowner promised and agreed to pay respondents additional wages at stipulated rates, termed "emergency wage increase" or "war bonus" (R#581, 386), for the period of internment if they were interned west of the 180th meridian. The Court of Appeals held that these riders, reasonably construed, entitled respondents to war bonus, at the rates stipulated, for the period they were interned by the Japanese on sea or land west of the 180th meridian. 177 F.2d 107, R#581, 428-434; 177 F.2d 111, R#582, 46-51. For purposes of its petition herein, petitioner concedes that construction to be a reasonable one. Pet. 21. Upon that construction the Court of Appeals reversed the final decree of the District Court denying respondents such war bonus, but affirmed that part of the decree denying respondents maintenance after capture of the vessel. R#581, 426-427; R#582, 42-43. It denied the shipowner's petition for rehearing. It granted in part the petition of respondents to modify or amend the judgments and allowed respondents interest and costs.

The case of the President Harrison is one of the very few cases wherein an American merchant vessel

sailing for the Orient shortly before Pearl Harbor was captured by the Japanese in the Orient or enroute thereto after Pearl Harbor. In the uncertain and unsettled days with ever-threatening emergencies and hazards preceding Pearl Harbor, riders forming parts of shipping articles and stipulating for war bonus were widely variant. An illustration is furnished by *Steeves v. American Mail Lines, Ltd.*, CA 9, 154 F.2d 24. All these variant riders, including riders worded similarly to those here involved, became obsolete after Pearl Harbor and the creation of the Maritime War Emergency Board on December 18, 1941. Riders stipulating for war bonus then became standardized and were made subject to the supervision, control, and decisions of the Board. On at least two occasions this Court has denied certiorari in cases involving MWEB riders. *Mason v. Texas Co.*, CA 1, 171 F.2d 559, certiorari denied May 31, 1949, 337 U.S. 915, 69 S.Ct. 1156; *Montoya v. Tidewater-Associated Oil Co.*, CA 2, 174 F.2d 607, certiorari denied October 17, 1949, 70 S.Ct. 69. A construction by this Court of the obsolete and individually worded riders here involved could have no possible importance beyond the particular facts and parties involved.

Petitioner won the war bonus issue in the District Court on the theory that the riders it prepared were valid and enforceable but ambiguous. R#581, 368-370. Petitioner adhered to that theory in the Court of Appeals and lost. R#581, 423-426; R#582, 49-51. In questing certiorari it now discards that theory and advances a new and different theory. The actual

ground of the petition is obvious. It sifts down to a plea that the riders violated collective bargaining agreements between petitioner and labor unions whereof respondents were members. Although petitioner prepared those riders and thereby induced respondents to accept employment and sail on petitioner's vessel to internment by the Japanese for approximately three years and nine months, petitioner now asks this Court to grant certiorari and relieve it from liability for war bonus on the theory that the promises and agreements it made in the riders to pay war bonus reflected unfair labor practices on its part and were therefore invalid and unenforceable. In support of this new and different theory petitioner fashions arguments around labor law decisions by this Court and other courts wherein questions of unfair labor practices were considered and determined. But the issues before the Court of Appeals in the present case did not require the consideration or determination of questions of that type. Nor did the Court of Appeals attempt to decide them. Nor can it be said that the decisions herein are at all in conflict with any of the labor law decisions invoked by petitioner. The petition for certiorari therefore presents the situation where a party defeated in the Court of Appeals on the issues there raised, considered, and determined is merely seeking another hearing in the Supreme Court for the purpose of raising new and different issues.

1. CERTIORARI SHOULD BE DENIED FOR THE REASON THAT THE PETITION DOES NOT PRESENT QUESTIONS WHOSE SOLUTION WILL HAVE IMMEDIATE IMPORTANCE BEYOND THE PARTICULAR FACTS AND PARTIES.

In *Magnum Import Co. v. Coty,* 262 U.S. 159, it was said at page 163:

> "The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first to secure uniformity of decision between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing."

More recently, these principles governing certiorari were repeated and amplified by the Chief Justice in his address before the American Bar Association on September 7, 1949. 70 S.Ct. XIII, XIV-XV.

Petitioner, as well as respondents, submitted to the Court of Appeals the issue whether the terms of the riders were self-sufficient to entitle respondents to the war bonus they claimed. Upon a reasonable construction of the riders the Court of Appeals ruled against petitioner. The actual scope of the decisions was a determination of the simple question of what construction was to be accorded somewhat novel contracts between private parties. Petitioner concedes the general rule that a question of that character does not warrant certiorari. Pet. 17, 33. The applicability of the general rule is particularly indicated here for, as

earlier pointed out, the riders involved and construed were of a type that became obsolete after Pearl Harbor and the creation of the Maritime War Emergency Board on December 18, 1941, and their construction now can have no possible importance beyond the particular facts and parties involved.

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2. CERTIORARI SHOULD NOT BE GRANTED TO DISTURB THE REASONABLE CONSTRUCTION GIVEN BY THE COURT OF APPEALS TO THE RIDERS PREPARED BY PETITIONER AND FORMING PART OF THE SHIPPING ARTICLES.

The theory of petitioner at the trial and on appeal was that the riders it prepared were valid and enforceable but ambiguous. As the Court of Appeals, responsive to the issues it was asked to decide, gave a reasonable construction to the riders, it is obvious under the general rule previously mentioned that certiorari should not be granted to disturb that construction.

For the purposes of certiorari petitioner has discarded its former theory and now advances a new and contrary theory. Petitioner argues for the first time in the petition herein that the riders it prepared reflected unfair labor practices on its part in violation of collective bargaining agreements to which it was party and that the riders were therefore invalid and unenforceable. On a reconstructed case pursuing this new and contrary theory and question of labor law it suggests, petitioner asks this Court to disturb the reasonable construction given the riders by the Court of

Appeals and declare the riders invalid and unenforceable. On that new and contrary theory, asserts petitioner, the decisions of the Court of Appeals herein are impliedly in conflict with labor law decisions of this Court respecting unfair labor practices.

Both the scope and the objective of the petition herein are obvious: petitioner discards the case it made out in the Court of Appeals whereby issues were submitted to that court for decision and decided on the theory that the riders were valid and enforceable; on a reconstructed case petitioner is merely seeking another hearing, this time before the Supreme Court, wherein it may urge its new and contrary theory that the riders were invalid and unenforceable. Clearly, certiorari is not merited under these circumstances.

CONCLUSION.

Respondents therefore respectfully submit that the petition for a writ of certiorari should be denied.

Dated, San Francisco,
March 20 1950.

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